

ATTORNEY DOCKET NO.

PATENT APPLICATION

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10/177,985

(1092.00)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: William A. Huffman
Serial No.: 09/909,704
Filing Date: July 20, 2001
Examiner: Christopher E. Lee
Art Unit: 2112
Title: QUEUE CIRCUIT AND METHOD OF MEMORY
ARBITRATION EMPLOYING SAME

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed September 13, 2005, Applicant respectfully request a Pre-Appeal Brief review of this application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005. Pursuant to the Official Gazette Notice, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. The Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish prima facie rejections in a Final Office Action, an improper denial of entry of a response, and premature issuance of a Final Action. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of September 13, 2005, the Examiner indicates that the Bauman, et al. patent discloses in FIGURE 17 a request queue 252 holding requests for arbitration by a secondary scheduler 272 as identified by a primary arbitration queue 282. The Bauman, et al. patent shows four separate paths providing this configuration. The Examiner identifies FIGURE 17 and the accompanying disclosure were not referred to by the Examiner in the previous Office Actions and have been relied on for the first time in the Advisory Action of September 13, 2005. However, the Bauman, et al. patent clearly discloses that requests enter each request queue in a time ordered manner with the oldest request being at the bottom of the request queue and the youngest request being at the top of request queue. Any grouping of requests in the Bauman, et al. patent is determined prior to placement into a request queue so that the right request can be provided to the right request queue. Requests placed into request queue 252

are destined for channel module 112 and thus become grouped prior to placement into request queue 252. Once in request queue 252, there is no further grouping of the requests as arbitration is performed among all of the requests therein. The claimed invention requires grouping of entries after being placed into a queue and not before as is performed in the Bauman, et al. patent. The Examiner has yet to show any grouping of requests being performed in the Bauman, et al. patent after placement into a queue let alone a determination as to which group to service and which entry to service in the identified group being serviced.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Office Action of June 24, 2005 to establish a prima facie rejection of all the claims in the application. In the Final Action of June 24, 2005, the Examiner relies on the use of registers 160, 162, 164, 166 in a request buffer 128 in FIGURE 7 of the Bauman, et al. patent. However, as pointed out by Applicant in the Response to Examiner's Final Action of August 24, 2005, packets enter the registers in a FIFO manner or are grouped by type before being placed into a register. Thus, no grouping of packets is performed by the Bauman, et al. patent after placement into a queue as required by the claimed invention. Therefore, the Examiner has failed to set forth a prima facie rejection of the claimed invention.

The Examiner indicated that the Response to Examiner's Final Action of August 24, 2005 would not be entered but did not provide any reasoning for it not being entered. No claims were amended in the Response to Examiner's Final Action of August 24, 2005. Therefore, Applicant respectfully requests that the Response to Examiner's Final Action be entered accordingly.

Applicant respectfully submits that the issuance of the Final Action of June 24, 2005 was premature in this Application. The Examiner issued a Final Action on June 24, 2005 based on newly cited art not previously of record in the Application. The newly cited art was available to the Examiner in preparing the Office Action of December 23, 2004 but was not used until the Final Action of June 24, 2005. The claims were not so dramatically amended to cause the Examiner to switch from one reference to another in rejecting claims of substantially the same subject matter as is frowned upon in M.P.E.P. §706.07. Applicant has not been given a full and fair hearing with respect to the Bauman, et al. patent and a clear issue has not been developed with respect to the Bauman, et al. patent in contradiction with M.P.E.P. §706.07. As pointed out at page 9, et seq., in the Response to Examiner's Final Action of August 24, 2005, Applicant respectfully submits that the Final Action was premature and improperly issued.

CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Charles S. Fish", with a stylized flourish at the end.

Charles S. Fish

Reg. No. 35,870

September 26, 2005

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